

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAWRENCE JOSEPH PHILLIPS,

Defendant-Appellant.

UNPUBLISHED

July 8, 1997

No. 190985

Recorder's Court

LC No. 95-003853 FC

Before: Cavanagh, P.J., and Doctoroff and D.A. Teeple*, JJ.

MEMORANDUM.

Following his bench trial conviction for second degree murder and assault with intent to commit murder, and resulting sentences of life imprisonment and 40 to 75 years, to be served concurrently, defendant appeals by right.

Defendant first contends that the trial court impermissibly rendered an inconsistent verdict when it found that, having rejected defendant's diminished capacity defense, defendant had the specific intent to kill his father when he assaulted him, but lacked premeditation when he killed his mother contemporaneously. The relevant key element of assault with intent to commit murder is the specific intent to kill; premeditation is not an element of assault with intent to murder, and the specific intent to murder may accordingly arise instantaneously. *People v Guy Taylor*, 422 Mich 554, 567-568; 375 NW2d 1 (1985). In this context, specific intent suggests that defendant killed his mother deliberately, but the trial court entertained a reasonable doubt on the element of premeditation. As premeditation is not an element of assault with intent to commit murder, the two verdicts are not factually inconsistent.

Defendant next contends that the trial court violated the legislative intent underlying the Indeterminate Sentencing Act by imposing both a life sentence and an indeterminate sentence with a 40-year calendar minimum, thereby depriving defendant of the benefits of the "lifer law," MCL 791.234(4); MSA 28.2304(4). This notion of legislative intent has been rejected by the Michigan Supreme Court in *People v Lemons*, 454 Mich 234; ___ NW2d ___ (1997), where a combination

* Circuit judge, sitting on the Court of Appeals by assignment.

of life sentences and indeterminate sentences with extremely long minima were affirmed.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Martin M. Doctoroff

/s/ Donald A. Teeple